

MEMORANDUM

Agenda Item No. 7(G)


TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: (Second Reading 12-6-16)
October 18, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Ordinance relating to criminal
history records checks; amending
section 2-30 of the Code;
clarifying that the Board is
authorizing by ordinance rather
than implementing order state
and national criminal history
screening for certain county
employees, appointees,
contractors, and employees of
contractors; removing references
to Implementing Order 7-41

The accompanying ordinance was prepared by the Human Resources Department and placed on the agenda at the request of Prime Sponsor Strategic Planning & Government Operations Committee.



Abigail Price-Williams
County Attorney

for

APW/cp

Memorandum



Date: December 6, 2016

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to be "Carlos A. Gimenez", written over a horizontal line.

Subject: Amendment to Section 2-30 of the Code of Miami-Dade County, Ordinance 15-20
Criminal History Record Checks

Recommendation

It is recommended that the Board of County Commissioners (Board) amend Section 2-30 of the Code of Miami-Dade County to remove any reference to Implementing Order 7-41.

This amendment is required by the Federal Bureau of Investigation (FBI) to make clear that the authority for the County to conduct background checks that involve FBI databases is derived from an ordinance adopted by this Board and not by an implementing order. The purpose is to ensure compliance with Florida Statutes Section 125.5801, which requires that a local government base its authority to conduct background checks in a duly adopted ordinance. This amendment to the Code is required to continue the Intergovernmental Agreement between Miami-Dade County and Florida Department of Law Enforcement (FDLE) to access state and national fingerprint-based criminal history records databases of the FDLE and the FBI.

The proposed ordinance amendment authorizes the County to perform comprehensive pre-employment fingerprint-based criminal history records checks for certain County employees, appointees and contractors, whether paid or unpaid, that are critical to security or public safety or who have direct contact with individual members of the public or access to any public facility or publicly operated facility where such contact or access is critical to security or public safety.

Scope

This ordinance will have a countywide impact.

Social Equity Statement

The proposed amendment benefits the County and its employees by making a concerted effort to ensure the safety and security of the community and employees while they occupy County owned and operated facilities. This ordinance will be applied uniformly for all individuals mentioned above. Results from criminal history record checks are reviewed by the hiring departments' Departmental Personnel Representative in consultation with the Human Resources Department.

Fiscal Impact

There is no fiscal impact as a result of this amendment to the ordinance. The fees associated with criminal history background checks are incurred by the user departments and the rate is \$36.00 for applicants, contractors and contractual temporary personnel, and \$28.75 for volunteers and non-paid interns. These rates are established by the FDLE.

Track Record/Monitoring

The Director of Human Resources Department Arleene Cuellar, will continue to manage the use of criminal history background checks in the recruitment and selection process, while utilizing guidelines from the Equal Employment Opportunity Commission and criminal history screening practices, as outlined in Section 2-31 of the Code of Miami-Dade County. Human Resources will

continue to work with departments regarding the use of pre-employment fingerprint-based criminal history record checks.

Background

On March 17, 2015, the Board adopted Ordinance 15-20 that created Section 2-30 of the Code, which authorizes the County to utilize FDLE and FBI databases to conduct criminal history background checks for employees, volunteers, interns, contractors and contractual temporary personnel prior to the commencement of employment or service with the County (Attachment 1).

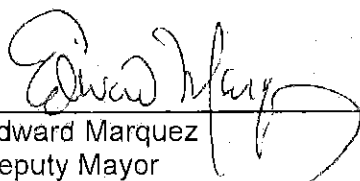
A copy of Ordinance 15-20 was forwarded to FDLE and the FBI on April 9, 2015, as required so that the County could continue accessing criminal history information from the FDLE and FBI databases. Thereafter, FDLE notified the County that the FBI did not accept Ordinance 15-20 enacted by the Board creating Section 2-30 in the Code of Miami-Dade County. The correspondence (Attachment 2) states the following:

"... Ordinance 15-20, does not meet the requirements of Pub. L. 92-544 for access to FBI Criminal History Record Information (CHRI). Specifically, the ordinance appears to rely upon Implementing Order 7-41, not on the Miami-Dade County Ordinance, as the authority for conducting criminal history background checks and indicates that the categories of individuals subject to background check may be expanded by amending Implementing Order 7-41. An Implementing Order is not sufficient to qualify under the requirement of Pub. L. 92-544, as it is not legislatively enacted."

In response to the feedback from the FBI, a revised draft of the ordinance was submitted to FDLE and the FBI for their review and subsequent approval prior to moving forward with the request for Board approval to amend Section 2-30 of the Code. The proposed amendment eliminates reference to Implementing Order 7-41, Pre-Employment Fingerprint-Based Criminal History Records Check.

The FDLE and FBI have approved the proposed amendment. Therefore, it is now appropriate to move forward and request Board approval to amend Section 2-30 of the Code with the changes addressing the FBI's concerns. Final approval from the FBI will only occur after the Board adopts the proposed revision to the ordinance.

In order for Miami-Dade County to continue to perform criminal history background checks utilizing the FDLE and FBI databases, the amended ordinance must be approved by the Board.



Edward Marquez
Deputy Mayor

MEMORANDUM

Amended
Agenda Item No. 7(E)

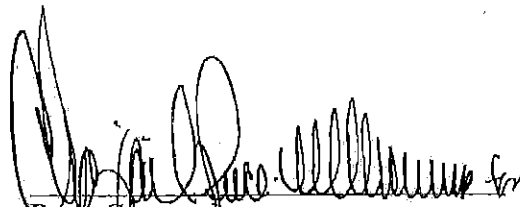
TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: (Second Reading 3-17-15)
January 21, 2015

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Ordinance related to conducting
criminal history record checks;
creating section 2-30
of the Code; codifying and
revising the authority
to conduct criminal history
record checks on certain County
employees, appointees,
contractors, or employees of
contractors in accordance with
State law
Ordinance No. 15-20

The accompanying ordinance was prepared by the Human Resources Department and placed on the agenda at the request of Prime Sponsor Health and Social Services Committee.



R. A. Cuevas, Jr.
County Attorney

RAC/cp

Memorandum



Date: March 17, 2015

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Ordinance creating Section 2-30 of the Code of Miami-Dade County; Authorizing the County to conduct fingerprint-based State and National Criminal History Record Checks for hiring of County employees, contractors and other persons with access to public facilities

Recommendation

It is recommended that the Board of County Commissioners (Board) enact this proposed ordinance to create Section 2-30 of the County Code to authorize the County to perform comprehensive pre-employment fingerprint-based criminal history record checks for specified county employees, applicants, volunteers, interns, contractors, and contractual temporary personnel prior to the commencement of employment or service with the County. The ordinance also authorizes fingerprint-based criminal history records checks on any private contractor, employee of a private contractor, vendor, repair person, or delivery person who has direct contact with individual members of the public or access to any public facility or publicly operated facility in such a manner or to such an extent that the governing body of the County finds that preventing unsuitable persons from having such contact or access is critical to security or public safety.

The proposed ordinance reflects changes made to section 125.5801, Florida Statutes, which authorizes criminal history record checks for certain County employees and appointees including applicants, volunteers, interns, contractors and contractual temporary personnel prior to the commencement of employment or service with the County.

County departments currently conduct pre-employment fingerprint-based criminal history record checks as authorized by Administrative Order 7-41. This proposed ordinance would codify the current procedures and authorize these same procedures for individuals accessing public facilities in such a manner or to such an extent that the governing body of the County finds that preventing unsuitable persons from having such contact or access is critical to security or public safety.

There is a companion item that will rescind Administrative Order 7-41 and approve Implementing Order 7-41 to effectuate this policy. The companion item will accompany this item at the time of the public hearing and second reading of this ordinance.

Scope

This ordinance will have a countywide impact.

Fiscal Impact

The cost incurred by user departments to perform background checks is \$40.50 for applicants, contractors and contractual temporary personnel, and \$33.00 for volunteers and non-paid interns. These rates do not change and an additional fiscal impact to the County is not anticipated with the approval of this item given that the County is already conducting pre-employment fingerprint-based criminal history record checks.

Track Record/Monitoring

The Human Resources Department will continue to manage the use of criminal history background checks in the recruitment and selection process. Guidelines from the Equal Employment Opportunity Commission will be utilized while working with all County departments concerning the use of pre-employment fingerprint-based criminal history record checks in the selection of applicants, volunteers, interns, contractors and contractual temporary personnel.

A handwritten signature, possibly "S. Gimenez", in dark ink.

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In addition to coordinating with the Human Resources Department for fingerprinting and background checks of all temporary and employment agency employees, County departments managing public facilities that fall under this requirement shall ensure that contractors, vendors, repair persons or delivery persons accessing these facilities are also properly screened by the Human Resources Department, as appropriate. More specifically, any person who has direct contact with individual members of the public or access to any public facility or publicly operated facility in such a manner or to such an extent that the governing body of the county finds that preventing unsuitable persons from having such contact or access is critical to security or public safety must be properly screened.

Background

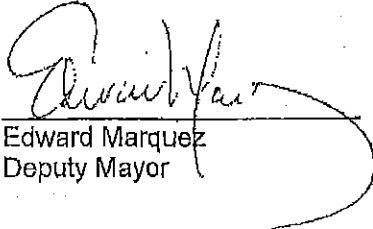
On January 20, 2005, the Board approved, through Resolution R-71-05, an Intergovernmental Agreement between Miami-Dade County and the Florida Department of Law Enforcement (FDLE) that allows the County access to state and national fingerprint-based criminal history records databases of FDLE and the Federal Bureau of Investigations (FBI) through the FDLE Volunteer and Employee Criminal History System (VECHS). The Intergovernmental Agreement allowed the County to expand its process to include comprehensive pre-employment fingerprint-based criminal history checks on a national basis to comply with the National Child Protection Act (NCPA) of 1993 and the Volunteers of Children Act (VCA) of 1998 (Attachment 1).

On February 9, 2012, the FBI performed an Integrated Automated Fingerprint Identification System Audit of the County's process of conducting pre-employment criminal history background records checks. The Audit found that the County was processing individuals not subject to background checks under NCPA/VCA through VECHS (Attachment 2). The FBI's concern stemmed from the fact that NCPA/VCA background checks are not applicable to all Miami-Dade County positions.

Additionally, the FBI corresponded with FDLE on August 6, 2013 and advised that Administrative Order 7-41 is not sufficient to satisfy the requirements of Public Law 92-544, which authorized the County to conduct national criminal history background checks, because it did not qualify as an ordinance adopted under section 125.5801, Florida Statutes. More specifically, Administrative Order 7-41 is not sufficient because it only relates to the authority of the Mayor and does not recognize the Board as the entity that enacts ordinances related to the affairs, property and government of Miami-Dade County (Attachment 3).

Enactment of the attached ordinance by the Board is required pursuant to state statute, but will also authorize national criminal history background checks for applicants and volunteers to positions deemed critical to security or public safety. Therefore, compliance with the state statute remedies the concerns of the FBI as it relates to background checks.

The final decision regarding the County's ability to continue utilizing FDLE and FBI databases to conduct criminal history background checks is solely dependent on enactment of this ordinance.


Edward Marquez
Deputy Mayor

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Memorandum



Date: January 20, 2005

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Agenda Item No. 7(O)(1)(C)

Subject: Intergovernmental Agreement with the State of Florida Department of Law
Enforcement (FDLE)

RECOMMENDATION

It is recommended that the Board approve the Intergovernmental agreement between Miami-Dade County and the State of Florida Department of Law Enforcement (FDLE) for the FDLE to provide fingerprint based criminal background checks for County employees. FDLE will provide background checks through their Volunteer and Employee Criminal History System (VECHS) under the National Child Protection Act (NCPA) of 1993, as amended, and Section 943.0542, Florida Statutes. Approval of this agreement will permit Miami-Dade County to expand its existing procedures and to perform more comprehensive employee criminal background checks. Through the VECHS program, FDLE and the Federal Bureau of Investigation (FBI) provide to qualified organizations (not individuals) state and national fingerprint based criminal history information on applicants, employees, and volunteers. Currently, fingerprints for full time employees for whom more extensive background checks are not required by the various County agencies, are electronically transmitted to the Miami-Dade Police Department (MDPD) for search against the local Miami-Dade County Fingerprint Database. This search does not include searches of fingerprint databases outside of Miami-Dade County. However, a name search is performed for any open fugitive information (warrants) against the FDLE database which shows outstanding warrants and other status files (public record).

BACKGROUND

Miami-Dade County desires to conduct more extensive background checks than are currently performed through existing procedures. Prior to the enactment of the National Child Protection Act of 1993, as amended, and subsequent provisions included in Section 943.0542, Florida Statutes, the County was not able to access fingerprint based criminal history due to the restrictions that limited access and use for law enforcement purposes only. The County has been advised by the State of Florida that criminal history checks that were previously unavailable, can now be accessed as a result of the NCPA (1993) as amended, and Florida Statute 943.0542 (1999) because the County provides services to children and the elderly. This change opens criminal history information to Miami-Dade County that may be accessed through the FDLE and FBI fingerprint based criminal history records databases. As a result, this search can be requested for any position within our organization.

The current fees for conducting criminal history background checks are currently \$23.00 for the state of Florida record search plus a federal search fee of \$24.00 for applicants and employees, and \$36.00 for volunteers (\$18.00 FDLE and \$18.00 FBI). FDLE collects both payments and forwards the appropriate federal fees to the FBI. The Employee Relations Department anticipates executing

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Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners
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approximately 3,000 background checks for new potential hires per year which amounts to an estimated \$250,000 per year. The NCPA requires the FDLE and the FBI to make a reasonable effort to return history information within 15 business days. However, the FDLE currently processes Florida record checks within 5 business days.

It should be noted that while FDLE criminal history and warrant information may be accessed as public information through the Internet, this is a name search only. However, name searches can produce erroneous results due to the unreliability of name information. Additionally, while Florida Warrant information is available at no charge through the Internet at <http://www.fdle.state.fl.us>, this background check does not qualify as "criminal justice purpose". Consequently, they cannot be done using the Florida Crime Information Center access at MDPD. Also, national warrants can only be obtained as part of a fingerprint based check.

Approval of the attached agreement will permit Miami-Dade County to expand the County's local pre-employment criminal background checks to include a search of state and national criminal records databases.


Assistant County Manager



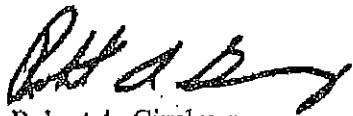


MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: January 20, 2005

FROM: 
Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No. 7(o)(1)(c)

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

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Approved _____ Mayor

Agenda Item No. 7(O)(1)(C)

Veto _____

01-20-05

Override _____

OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
DADE COUNTY, FLORIDA

RESOLUTION NO. R-71-05

RESOLUTION AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE STATE OF FLORIDA DEPARTMENT OF LAW ENFORCEMENT (FDLE) FOR THE FDLE TO PROVIDE FINGERPRINT BASED BACKGROUND CHECKS FOR COUNTY EMPLOYEES AND VOLUNTEERS THROUGH THEIR VOLUNTEER AND EMPLOYEE CRIMINAL HISTORY SYSTEM (VECHS) FOR CRIMINAL HISTORY RECORD CHECKS UNDER THE NATIONAL CHILD PROTECTION ACT OF 1993, AS AMENDED, AND SECTION 943.0542 FLORIDA STATUTES; AND AUTHORIZING THE COUNTY MANAGER TO EXECUTE AGREEMENT AND TERMINATION PROVISIONS AS CONTAINED THEREIN


WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference; and

WHEREAS, the Home Rule Charter authorizes Miami-Dade County to provide for the uniform health and welfare of the residents throughout the County and further provides that all functions not otherwise specifically assigned to others under the Charter shall be performed under the supervision of the County Manager; and

WHEREAS, this Board desires that Miami-Dade County exercise due diligence in the employment of qualified individuals to County service who provide direct and indirect services to residents throughout the County; and

WHEREAS, the State of Florida, Florida Department of Law Enforcement, provides said services of value to the County and has demonstrated an ability to provide these services; and

WHEREAS, the County is desirous of obtaining those services,

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NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY FLORIDA, that this Board approves the execution of the Intergovernmental Agreement between Miami-Dade County and the State of Florida, Florida Department of Law Enforcement to enable the County to obtain fingerprint based background checks for County employees through the Volunteer and Employee Criminal History System (VECHS) for Criminal History Record Checks under the National Child Protection Act of 1993, as amended, and Section 943.0542, Florida Statutes; and authorizes the County Manager to execute same for and on behalf of Miami-Dade County; and to authorize the County Manager to execute termination provisions as contained therein.

The foregoing resolution was offered by Commissioner Sally A. Heyman, who moved its adoption. The motion was seconded by Commissioner Katy Sorenson and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman	aye		
Dennis C. Moss, Vice-Chairman	aye		
Bruno A. Barreiro	absent	Dr. Barbara Carey-Shuler	aye
Jose "Pepe" Diaz	absent	Carlos A. Gimenez	aye
Sally A. Heyman	aye	Barbara J. Jordan	aye
Dorin D. Rolle	aye	Natacha Seijas	absent
Katy Sorenson	aye	Rebecca Sosa	aye
Sen. Javier D. Souto	absent		


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The Chairperson thereupon declared the resolution duly passed and adopted this
20th day of January, 2005. This Resolution and contract, if not vetoed, shall become
effective in accordance with Resolution No. R-377-04,

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by the County Attorney as
to form and legal sufficiency 

By: _____
Deputy Clerk

Eric A. Rodriguez



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Florida Department of Law Enforcement
Criminal Justice Information Services / User Services Bureau

VECHS QUALIFIED ENTITY APPLICATION

Volunteer & Employee Criminal History System (VECHS)
for Criminal History Record Checks

under the National Child Protection Act of 1993, as amended,
and Section 943.0542, Florida Statutes

ENTITY NAME: Miami-Dade County

PHYSICAL OPERATING ADDRESS IN FLORIDA: 111 N.W. 1st Street, Suite 2110, Miami, Florida 33128

COUNTY: Miami-Dade

MAIN CORPORATE/ORGANIZATION PHYSICAL ADDRESS: 111 N.W. 1st Street Miami, Florida 33128

MAILING ADDRESS: 111 N.W. 1st Street, Suite 2110 Miami, Florida 33128

ENTITY PHONE: (305) 375-1589

FAX: (305) 375-2459

NAME OF ENTITY HEAD: George M. Burgess

TITLE: County Manager

CONTACT PERSON: Donald S. Allen

TITLE: Director, Employee Relations Dept.

CONTACT PHONE: (305) 375-1589

E-MAIL ADDRESS: DON@miamidade.gov

LEGAL TYPE OF ENTITY (Select one):

Governmental (Public) ☒

Private - Non-Profit ☐

Private - Profit ☐

Please check all appropriate areas below that apply to the service(s) provided by your entity to children, the elderly, and/or the disabled. NOTE: A "child" includes any unmarried person under 18 years of age that has not been emancipated by order of a court. An "elderly person" means any person 60 years of age or older. A "disabled person" includes any person with a mental or physical impairment who requires assistance to perform one or more daily tasks.

Type of Person(s)	Care or Treatment	Education, Training, or Instruction	Supervision	Recreation	Care Placement
Child	X	X	X	X	X
Elderly	X	X	X	X	X
Disabled	X	X	X	X	X

ENTITY MISSION STATEMENT/SUMMARY OF TYPE OF SERVICES YOUR ENTITY PROVIDES - Please describe the services your entity provides that would qualify your entity to receive state and national criminal history record checks under this program and the applicable laws:

Miami-Dade County provides a variety of social services to children, the elderly, and disabled requiring direct contact with these residents by County staff.

Do you plan to request state & national criminal history checks through the VECHS Program on YOUR current or prospective FLORIDA employees, volunteers, contractors/vendors? YES ☒ NO ☐ If no, please explain (continue on separate page, if necessary):

(Contractors or vendors may be checked through the VECHS Program, if they have or may have unsupervised access to the children, elderly, or disabled persons for whom a qualified entity provides care.)

Number of Current Employees:

30,000

Number of Current Volunteers:

500

Number of Expected New Employees during the next 12 months:

2,500

Number of Expected New Volunteers during the next 12 months:

500

Are you currently required by law to obtain state and national (LEVEL 2) criminal history record checks on any of your current/prospective employees, volunteers? YES ☒ NO ☐ If yes, what state agency monitors your entity and these required record checks? FDLE

PLEASE NOTE: Entities that are required to obtain state and national (LEVEL 2) criminal history checks under other statutory provisions, on all or specific employees/volunteers, must continue to comply with those statutes and the procedures that specifically apply to them. These entities must continue to use the fingerprint cards specifically provided for processing the required record checks. Requests for these required criminal history record checks may not be processed through the VECHS Program, pursuant to federal and Florida law.

Approximately how many fingerprint cards do you anticipate submitting to FDLE, through the VECHS Program, for state and national criminal history record checks, within the next twelve months?

3,000

SIGNATURE OF ENTITY HEAD: _____

DATE: _____

Please mail your completed application to FDLE at the address below. Please contact us at the number below for further information.

FLORIDA DEPARTMENT OF LAW ENFORCEMENT
USER SERVICES BUREAU - ATTN: VECHS TEAM - P.O. BOX 1488
TALLAHASSEE, FL. 32302-1488
(850) 410-VECHS

[Handwritten signature and number 13]



Florida Department of Law Enforcement
Criminal Justice Information Services
User Services Bureau

VECHS USER AGREEMENT

Volunteer & Employee Criminal History System (VECHS)
for Criminal History Record Checks by a Qualified Entity
under the National Child Protection Act of 1993, as amended,
and Section 943.0542, Florida Statutes

I. Parties to Agreement

This Agreement, entered into by the Florida Department of Law Enforcement (hereinafter referred to as FDLE), an agency of the State of Florida, with headquarters in Tallahassee, Florida, and Miami-Dade County (hereinafter referred to as User), located at 111 N.W. 1 Street, Suite 2110 Miami, FL 33128, is intended to set forth the terms and conditions under which criminal history background checks authorized by the National Child Protection Act of 1993, as amended, (hereafter referred to as the NCPA), and as implemented by Section 943.0542, Florida Statutes, (F.S.), shall be conducted.

- A. FDLE has established and maintains intrastate systems for the collection, compilation, and dissemination of state criminal history records and information in accordance with subsection 943.05(2), F.S., and, additionally, is authorized and does participate in similar multi-state and federal criminal history records systems pursuant to subsection 943.05(2), F.S.;
- B. FDLE and its user agencies are subject to and must comply with pertinent state and federal regulations relating to the receipt, use, and dissemination of records and record information derived from the systems of FDLE and the United States Department of Justice (Chapter 943, F.S., Chapter 11C-6, F.A.C., 28 C.F.R. Part 20);
- C. User is a public, private, for profit, or not-for-profit entity operating within the State of Florida and is authorized to submit fingerprint cards and review resultant criminal history records as part of the screening process for its current and/or prospective employees and volunteers (which classes of persons shall be understood for purposes of this Agreement to include contractors and vendors who have or may have unsupervised access to the children, disabled, or elderly persons for whom User provides care), pursuant to section 943.0542, F.S., and the NCPA, and forms the legal basis for User's access to criminal history record information derived from the systems of the U.S. Department of Justice; and
- D. User is desirous of obtaining and FDLE is required and willing to provide such services so long as proper reimbursement is made and all applicable federal and state laws, rules, and regulations are strictly complied with.

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Florida Department of Law Enforcement/CJIS/USB/VECHS
(VECHS - Volunteer & Employee Criminal History System)
User Agreement for Criminal History Record Checks
Page 2

Now, therefore, in light of the foregoing representations and the promises, conditions, terms, and other valuable considerations more fully set forth hereinafter or incorporated by reference and made a part hereof, FDLE and User agree as follows:

II. Service, Compliance, and Processing

A. FDLE agrees to:

1. Assist User concerning the privacy and security requirements imposed by state and federal laws, and regulations; provide User with copies of all relevant laws, rules, and or regulations as well as updates as they occur; offer periodic training for User's personnel;
2. Provide User with such state criminal history records and information as reported to, processed, and contained in its systems and legally available to the User; and
3. Act as an intermediary between User and the United States Department of Justice, securing for the use and benefit of User such federal and multi-state criminal history records or information as may be available to User under federal laws and regulations.

B. User agrees to:

1. Submit requests to FDLE for criminal history background checks pursuant to this agreement only for User's current and prospective Florida employees and volunteers, for whom User is not already required to obtain state and national (Level-2) criminal history background checks under any other state or federal statutory provision. User shall continue to comply with all other such statutory provisions for all applicable persons;
2. Determine whether the current or prospective employee or volunteer has been convicted of, or is under pending indictment for, a crime that bears upon his or her fitness to have access to or contact with children, the elderly, or individuals with disabilities;
3. Obtain a completed and signed Waiver Agreement and Statement form (provided by FDLE) from every current or prospective employee and volunteer, for whom User submits a request for a criminal history background check to FDLE. (The signed Waiver Agreement and Statement allows the release of state and national criminal history record information to the qualified entity.) The Waiver Agreement and Statement must include the following: (a) the person's name, address, and date of birth that appear on a valid identification document (as defined at 18 U.S.C. section 1026); (b) an indication of whether the person has or has not been convicted of a crime, and, if convicted, a description of the crime and the particulars of the conviction; (c) a notification to the person that User may request a criminal history background check on the person as authorized by section 943.0542, F.S., and the NCPA; (d) a notification to the person of his or her rights as explained in paragraph 12 below; and (e) a notification to the person that, prior to the completion of the background check, User may choose to deny him or her unsupervised access to a

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person to whom User provides care. User shall retain the original of every Waiver Agreement and Statement and provide FDLE with a copy thereof;

4. Use only fingerprint cards provided by FDLE specifically designed for use with requests for criminal history record checks under the NCPA; provide FDLE with a properly completed and executed fingerprint card for each current or prospective employee and volunteer for whom User requests a criminal history record check pursuant to this agreement; and indicate either "NCPA/VCA VOLUNTEER" or "NCPA/VCA EMPLOYEE" in the "reason fingerprinted" block of each fingerprint card submitted. (VCA refers to Volunteers for Children Act);
5. Keep all records necessary to facilitate a security audit by FDLE and to cooperate in such audits as FDLE or other authorities may deem necessary. Examples of records that may be subject to audit are criminal history records; notification that an individual has no criminal history; internal policies and procedures articulating the provisions for physical security; records of all disseminations of criminal history information; and a current, executed User Agreement with FDLE;
6. ****IF ENTITY IS PRIVATE, FOR PROFIT OR NOT FOR PROFIT**** - Pay for services provided by FDLE and the Federal Bureau of Investigation (FBI) in accordance with rule 11C-6.004, F.A.C., with the submission of fingerprint cards;
7. ****IF ENTITY IS A GOVERNMENTAL AGENCY**** - If set up on a billing account with FDLE for services requested pursuant to this agreement, reimburse FDLE, in a timely fashion, in accordance with rule 11C-6.004, F.A.C., upon proper presentation of billing for state services rendered and reimburse the FBI, in a timely fashion via FDLE, upon proper presentation of billing for federal services rendered. ~~If not on a billing account, User shall pay for services provided by FDLE and the FBI in accordance with rule 11C-6.004, F.A.C., with the submission of fingerprint cards and requests for criminal history background checks;~~
8. ****IF ENTITY IS A GOVERNMENTAL AGENCY**** - Maintain adequate records and monitor allocated funds for payment of services under this agreement;
9. Insure that the appropriate personnel know to keep the information obtained under this agreement in a secure place and to use it only for the screening as outlined in this agreement;
10. Promptly advise FDLE of any violations of this agreement;
11. Share criminal history information with other qualified entities only after confirming with FDLE that the requesting entity has been designated a qualified entity and has signed a user agreement, and only after verifying that the current prospective employee or volunteer has authorized the release of his or her criminal history records, if any, to other qualified entities by a statement on his or her signed waiver. User will respond that it is unable to provide any information to the requesting entity if the current or prospective employee or volunteer has requested that his or her criminal history record (s) not be released to any other qualified entity; and
12. Notify the current or prospective employee or volunteer of his or her right to obtain a copy of the criminal history records, if any, contained in the report, and of the

person's right to challenge the accuracy and completeness of any information contained in any such report, and to obtain a determination as to the validity of such challenge before a final determination regarding the person is made by the qualified entity reviewing the criminal history information. (Information on these rights may be obtained by contacting FDLE, regarding Florida records, at FDLE, Attn: USB/VECHS Unit, P.O. Box 1489, Tallahassee, Florida 32302-1489, (850) 410-8324, or by contacting the FBI, regarding federal/national records, at FBI, Criminal Justice Information Services Division, Attn: SCU, MOD D-2, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, (304) 625-3878.) A qualified entity that is required by law to apply screening criteria, notwithstanding any right to contest or request an exemption from disqualification, shall apply such screening criteria to the state and national criminal history record information received from the department.

III. Privacy and Security

- A. User shall use criminal history record information acquired hereunder only to screen User's Florida current and/or prospective employees and/or volunteers, and only for purpose(s) of employment and/or determination of suitability for access to children, elderly, or disabled persons, pursuant to the terms of the NCPA of 1993, as amended, and section 943.0542, F.S. If User is a governmental agency, such records may additionally be used in administrative hearings associated with one of the enumerated purposes;
- B. User shall not commingle criminal history records with other records, whether such other records are public or not;
- C. User shall not duplicate and/or disseminate criminal history records acquired hereunder ~~for use outside of User entity except as authorized by state and federal law.~~ Sharing of criminal history records with other qualified entities is permitted by the FBI provided that:
 1. Such other entity is authorized to receive criminal history record information derived from the systems of the U.S. Department of Justice in the manner specified herein and User has verified the other entity's qualifying status as required herein; and
 2. User properly listed "NCPA/VCA VOLUNTEER" or "NCPA/VCA EMPLOYEE", in the "reason fingerprinted" block of the fingerprint card User submitted to FDLE for the applicable current or prospective employee or volunteer. (VCA represents Volunteers for Children Act);
- D. User has been approved to receive criminal history record information pursuant to specific statutory authority and shall not use criminal history record information acquired pursuant to such approval for any other purpose;
- E. User shall not use or rely upon a criminal history record or information which is or is likely to be out-of-date and, in any event, if criminal activity is pertinent to and considered at the time of an employee or volunteer's service, a current computerized criminal history must be requested and relied upon;
- F. User may destroy criminal history records when they are no longer needed. The original Waiver Agreement and Statement form must be retained by User for as long as the employee or volunteer is working for User, or for five years, whichever is longer.

Destruction must be accomplished in a way so that the information cannot be retrieved; for example, the records may be shredded;

- G. User shall keep criminal history records acquired hereunder in a secure file, safe, or other security device, such as locked file cabinet in an access-controlled area, and shall take such further steps as are necessary to insure that the records are accessible only to those of its employees who have been trained in their proper use and handling and have a need to examine such records; and

- H. ****IF ENTITY IS SUBJECT TO THE PUBLIC RECORDS ACT**** - If User is subject to the Public Records Act, chapter 119, F.S., User shall, upon receipt of any request, pursuant to the public records law, for a processed fingerprint card or criminal history record, transmit the request, along with the involved fingerprint card and criminal history record, to the Florida Department of Law Enforcement, Attention: User Services Bureau. FDLE will prepare copies of the involved documents, obliterating any state or federal data which is not available for dissemination under the Florida public records law, and return all documents to the User for response to the requester. However, a processed card, or photocopy of same, may be provided to a law enforcement agency for fingerprint identification purposes, if so requested. User shall not release any criminal history information that is made exempt from public records disclosure by law. In particular, record information derived from the U.S. Department of Justice shall not be disseminated outside the User entity or used for a purpose other than that specified in the statute authorizing the request, section 943.0642, F.S.

IV. Termination

Either FDLE or User may suspend the performance of services under this agreement when, ~~in the reasonable estimation of FDLE or User, the other party has breached any material term of the agreement.~~ Furthermore, upon FDLE becoming aware of a violation of this agreement which might jeopardize Florida's access to federal criminal history information, FDLE shall have the option of suspending services under this agreement, pending resolution of the problem. The violation of any material term of this agreement or of any substantive requirement or limitation imposed by the federal or state statutes, regulations, or rules referred to in this agreement shall be deemed a breach of a material term of the agreement.

Section 943.053(4), F.S., provides that criminal history record information received from (FDLE) "shall be used only for the purpose stated in the request." National criminal history information received from the FBI is made confidential by federal law and regulation. Section 815.04(3)(b), F.S., prohibits, as a third-degree felony, the willful and knowing disclosure of data from a computer system, without authorization, which data is made confidential by law.

V. Miscellaneous

- A. User agrees that

1. User is currently operating a lawful business or other entity within the State of Florida, with a physical address in Florida;

2. User is legally authorized to operate its business or other entity within the State of Florida;
 3. User has complied and will continue to comply with all requirements to properly operate its business or other entity within the State of Florida; and
 4. User shall promptly notify FDLE upon any change to the above, including but not limited to name, address, and status as a business or other entity operating in Florida.
- B. This agreement supersedes any previous agreements concerning the NCPA of 1993, as amended, and/or section 943.0542, F.S.;
- C. This agreement may be amended by FDLE as needed, to comply with state or federal laws or regulations, or administrative needs of FDLE; and
- D. This agreement is binding upon all User employees, agents, officers, representatives, volunteers, contractors, vendors, successors in interest, beneficiaries, subsidiaries, and assigns.

IN WITNESS HEREOF, the parties hereto have caused this agreement to be executed by the proper officers and officials.

NAME OF USER ENTITY _____

ENTITY HEAD _____ TITLE _____
(PLEASE PRINT)

ENTITY HEAD _____
(SIGNATURE)

DATE _____

WITNESS _____ TITLE _____

FLORIDA DEPARTMENT OF LAW ENFORCEMENT (FDLE)

BY _____ TITLE _____

DATE _____

WITNESS _____ TITLE _____

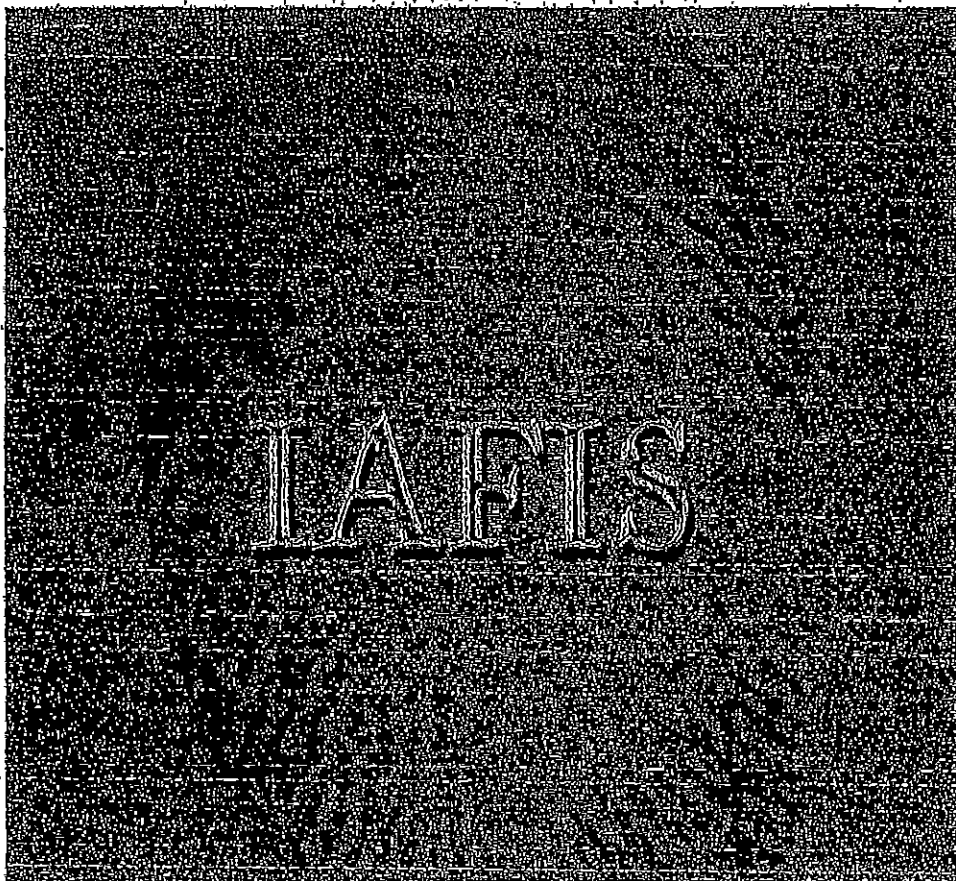


U.S. Department of Justice
Federal Bureau of Investigation
Criminal Justice Information Services Division
CJIS Audit Unit

February 2012

Integrated Automated Fingerprint Identification System Audit

Noncriminal Justice Use of CHRI Assessment



Noncriminal Justice Use of CHRI Assessment

~~17~~ 20

Overview

Integrated Automated Fingerprint Identification System (IAFIS) Audit

The FBI Criminal Justice Information Services (CJIS) Division has established audit programs for the purpose of evaluating compliance with policy requirements associated with access to CJIS Systems and information. The Integrated Automated Fingerprint Identification System (IAFIS) Audit assesses compliance with Interstate Identification Index (III)/National Fingerprint File (NFF) participation standards; federal laws and regulations associated with the use, dissemination, and security of national criminal history record information (CHRI); and National Crime Prevention and Privacy Compact (Compact) rules and procedures. The IAFIS Audit analyzes methods used by State criminal history record repositories, Federal agencies, and other authorized entities to administer policies and procedural requirements.

An integral component of the IAFIS Audit includes an assessment of agencies which receive CHRI for noncriminal justice purposes. The assessment determines compliance with policy requirements derived and summarized from sources which primarily include federal laws and regulations associated with the use, dissemination, and security of CHRI. In addition, compliance with Compact Council rules and procedures is assessed as part of the review process. The Compact Council, comprised of federal, state, and local governmental representatives, is federally authorized to promulgate rules and procedures governing the use of the III System for noncriminal justice purposes. Other policy requirements may be assessed based upon applicability to specific agencies.

The review process includes an administrative interview in order to assess whether procedures used by the agency are compliant with policy. As applicable, a validation of a sampling of CHRI requests submitted by the agency is also conducted. The results of the review are included in the IAFIS Audit Report.

Noncriminal Justice Use of CHRI Assessment

Agency	Miami Dade County
ORI	E13020015 and V13020015
Date	February 9, 2012
Auditor	Cheryl D. Marple-Burke (FPU - Deborah Williams)

Authorized Use of CHRI

The FBI is authorized to exchange CHRI with, and for the official use of, authorized officials of the Federal Government, States, cities, and other institutions. CHRI may be made available for use in connection with licensing or employment, pursuant to Public Law 92-544, or other federal legislation, and for other uses for which dissemination is authorized by federal law. CHRI obtained under such authority may be used solely for the purpose for which the record was requested. Subject fingerprints or other approved forms of positive identification shall be submitted with all requests for CHRI for noncriminal justice purposes. Access to the III using name-based inquiry and record request messages is not permitted for noncriminal justice purposes, unless otherwise approved by the FBI and/or the Compact Council pursuant to applicable authority. (Title 28, U.S.C., § 534 (a)(4); Title 42, U.S.C., § 14616, Article IV (c) and Article V (a) and (c); Title 28, C.F.R., § 20.33 (c)(3) and (d), § 50.12, and Part 901; CJIS AFB "Concept for the Exchange of Criminal History Records for Noncriminal Justice Uses by Means of The III", Section B.)

- ☐ In compliance
☒ Out of compliance

Comments:

all departments within
the county are eligible for
submission under the
NCPA/VCA (VEANS)

Dissemination of CHRI

Access to CHRI by authorized officials is subject to cancellation if dissemination is made outside the receiving departments, related agencies, or other authorized entities. (Title 28, U.S.C., § 534 (b); Title 42, U.S.C., § 14616, Article IV (c); Title 28, C.F.R., § 50.12 (b))

- ☒ In compliance
☐ Out of compliance

Comments:

~~22~~ 22

Security of CHRI

Agencies are required to establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity. (Title 42, U.S.C., § 14616, Article IV (c) and Title 5, U.S.C., § 552a, (e)(10))

☒ In compliance

Comments: _____

☐ Out of compliance

III Access for Exigent Circumstances (Purpose Code X)

For purposes approved by the Compact Council, a delayed submission of fingerprints may be permissible under exigent circumstances. Once a specific proposal has been approved by the Compact Council, another state may apply for delayed fingerprint submission consistent with the approved proposal. A preliminary III name-based check (Purpose Code X) may be made pending the receipt of the delayed submission of the fingerprints. The state repository may authorize terminal access to authorized agencies designated by the state, to enable them to conduct such checks. The fingerprints must be submitted within the time frame specified by the Compact Council. For the purposes of this policy, "time frame" means the number of days that elapse between the date on which the name search was conducted and the date on which the state repository either positively identifies the fingerprint subject or forwards the fingerprints to the FBI or the date a Federal agency forwards the fingerprints to the FBI. (Title 28, C.F.R., Part 901)

Florida Proposal

The approved proposal authorizes III access on a delayed fingerprint submission basis to make emergency placements of children by a state statute which has been approved by the U.S. Attorney General pursuant to Pub. L. 92-544. Pursuant to the approved proposal, fingerprints are to be submitted as a follow-up to the III name-based check within five working days from such time the name checks are conducted. For the purposes of the proposal, working day is defined as a day when a governmental agency is open for business. (Federal Register, Vol. 66, No. 98, pg. 28004)

Amended Florida Proposal

The approved amended proposal expands the "five working days" time frame to "15 calendar days." (Federal Register, Vol. 68, No. 153, pg. 47369)

☐ In compliance

Comments: _____

☐ Out of compliance

☒ Not assessed

~~23~~ 23

Outsourcing of Noncriminal Justice Administrative Functions

The dissemination restrictions of Title 28, U.S.C., § 534 and Title 28, C.F.R., § 50.12 have been amended to permit the outsourcing of noncriminal justice administrative functions requiring access to CHRI to either another governmental agency or a private contractor acting as an agent for the authorized receiving agency. The outsourcing of noncriminal justice administrative functions requiring access to CHRI must comply with the Security and Management Control Outsourcing Standard for Non-Channelers. (Title 28, C.F.R., Part 906)

<input type="checkbox"/> In compliance	Comments: _____
<input type="checkbox"/> Out of compliance	_____
<input checked="" type="checkbox"/> Not assessed	_____

User Fee

Agencies must ensure that all fingerprint-based requests for CHRI are properly submitted in order to ensure the appropriate application of user fees. Pursuant to Public Law 101-515, the FBI may establish and collect fees to process fingerprint identification records and name checks for noncriminal justice, non-law enforcement employment. In accordance with Title 42, U.S.C., § 5119a(e), in the case of a background check conducted with fingerprints on a person who volunteers with a qualified entity, the fees collected by the FBI may not exceed eighteen dollars, or the actual cost, whichever is less. The FBI does not charge a fee for identification services performed for criminal justice purposes, including checks of applicants for criminal justice employment.

<input checked="" type="checkbox"/> In compliance	Comments: _____
<input type="checkbox"/> Out of compliance	_____
<input type="checkbox"/> Not assessed	_____

Murphy, Charles

From: Aldridge, Thomas G. <Thomas.Aldridge@ic.fbi.gov>
Sent: Tuesday, August 06, 2013 12:30 PM
To: Murphy, Charles
Cc: Uzzell, Donna; Commodore, Todd C.; Wickline, Randall P.; Chaney, Christopher; Bokey, Lori L.; Boone, David N.
Subject: Miami-Dade Administrative Order
Attachments: SKMBT_75113080809140[1].pdf

Chuck,

Thanks for providing a copy of the attached Miami-Dade Administrative Order No. 7-41 regarding pre-employment fingerprint based criminal history records check (effective 10/28/2005). Todd provided me with a copy of the order for review. For the reasons discussed below, this Order is not sufficient to authorize FBI criminal history background checks for Miami-Dade county employees.

An Administrative Order is not sufficient to qualify under the Florida Public Law (Pub. L.) 92-544 umbrella statutes, F.S.A. § 125.5801 or § 166.0442. These Florida statutes specifically require a county "ordinance" to authorize a background check. Miami-Dade Administrative Orders relate to the authority of the Mayor. See § 5.02 of the Miami-Dade County Home Rule Amendment and Charter. In contrast, the Board of County Commissioners of Dade County is the entity authorized to pass ordinances relating to the affairs, property and government of Dade County. See § 11(b) of Art. VIII of the Constitution of 1885, as amended. Hence, the Miami-Dade County Commission must pass an ordinance to qualify under the Florida umbrella statutes identified above.

The submitted Administrative Order applies to the Florida VECHS waiver system, which is specific to the NCPA/VCA. As previously advised, the NCPA/VCA is not applicable to all Miami-Dade county employees.

Finally, the Administrative Order does not make the necessary determination which county government positions are "critical to security or public safety." This is a requirement of the Florida Pub. L. 92-544 statutes noted above.

The Miami-Dade County Commission can model its ordinance on the previously approved Collier and Palm Beach ordinances authorizing criminal history background checks of its government employees. I recommend that the draft ordinance be submitted to AIU for review prior to being enacted.

Please let me know if you have any questions.

Thomas G. Aldridge
 Access Integrity Unit
 Office of the General Counsel
 CJIS Division
 (304) 625-3620
 BB (304) 672-0466
thomas.aldrige@ic.fbi.gov

Confidentiality Statement:

This message is transmitted to you by the Office of the General Counsel of the Federal Bureau of Investigation. The message, along with any attachments, may be confidential and legally privileged. If you are not the

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MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: March 17, 2015

FROM: 
R. A. Cuevas, Jr.,
County Attorney

SUBJECT: Agenda Item No. 7(E)

Please note any items checked.

_____ "3-Day Rule" for committees applicable if raised

_____ 6 weeks required between first reading and public hearing

_____ 4 weeks notification to municipal officials required prior to public hearing

_____ Decreases revenues or increases expenditures without balancing budget

_____ Budget required

_____ Statement of fiscal impact required

_____ Ordinance creating a new board requires detailed County Mayor's report for public hearing

_____ No committee review

_____ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve

_____ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

~~23~~ 26

Approved _____ Mayor
Veto _____
Override _____

Amended
Agenda Item No. 7(E)
3-17-15

ORDINANCE NO. 15-20

ORDINANCE RELATED TO CONDUCTING CRIMINAL HISTORY RECORD CHECKS; CREATING SECTION 2-30 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; CODIFYING AND REVISING THE AUTHORITY TO CONDUCT CRIMINAL HISTORY RECORD CHECKS ON CERTAIN COUNTY EMPLOYEES, APPOINTEES, CONTRACTORS, OR EMPLOYEES OF CONTRACTORS IN ACCORDANCE WITH STATE LAW; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, in 2005, Miami-Dade County instituted a policy for conducting criminal background checks of employees, applicants and others as more fully set forth in Administrative Order 7-41 pursuant to section 125.5801, Florida Statutes; and

WHEREAS, section 125.5801 was amended in 2013 to expand its scope; and

WHEREAS, section 125.5801 currently requires such criminal background check policies to be enacted as an ordinance approved by the Board of County Commissioners in order to permit state and national criminal history records checks for:

- (a) Any position of county employment or appointment, whether paid, unpaid, or contractual, which is identified as critical to security or public safety; and
- (b) Any private contractor, employee of a private contractor, vendor, repair person, or delivery person who has direct contact with individual members of the public or access to any public facility or publicly operated facility in such a manner or to such an extent that the governing body of the county finds that preventing unsuitable persons from having such contact or access is critical to security or public safety; and

24 27

WHEREAS, to implement the current requirements of section 125.5801, this Board determines that it is in the best of interest of the County to enact this Ordinance and through a companion resolution, rescind Administrative Order 7-41 and replace it with Implementing Order 7-41 to provide that the persons set forth above are subject to a criminal history background check through the Florida Department of Law Enforcement and the Federal Bureau of Investigation; and

WHEREAS, this Board finds that Implementing Order 7-41 authorizes criminal history records checks of any position of county employment or appointment, whether paid, unpaid, or contractual, which is identified as critical to security or public safety; and any private contractor or employee of a private contractor who has direct contact with individual members of the public or access to any public facility or publicly-operated facility to such an extent that such contact or access is critical to security or public safety; and this Board deems that the positions to which this Ordinance and Implementing Order 7-41 applies are critical with regard to security or to public safety; and

WHEREAS, such criminal history record checks include fingerprinting these individuals, and having the individual's fingerprints submitted to the Florida Department of Law Enforcement for a state criminal history background check and to the Federal Bureau of Investigation for a national criminal history records check; and

WHEREAS, the information obtained from the criminal history record checks will be used to determine the respective individual's eligibility for employment or appointment by the County as authorized by this Board and section 125.5801,

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY
COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:**

Section 1. Section 2-30 of the Code of Miami-Dade County, Florida, is hereby
created to read as follows:¹

**Sec. 2-30. Criminal history record checks for certain
county employees, appointees, and contractors.**

Pursuant to section 125.5801, Florida Statutes, as such may be
amended from time to time, state and national criminal history
background checks shall be required for:

- (a) Any position of county employment or appointment,
whether paid, unpaid, or contractual, which is identified as
critical to security or public safety pursuant to
Implementing Order 7-41, as such may be amended from
time to time; and
- (b) Any private contractor or employee of a private contractor
who has direct contact with individual members of the
public or access to any public facility or publicly-operated
facility to such an extent that the legislative body of the
County finds that such contact or access is critical to
security or public safety, as set forth in Implementing Order
7-41, as such may be amended from time to time.

Each such person shall be fingerprinted who is applying for any
such position, continuing employment or appointment in any such
position, or having such contact or access. The Miami-Dade
County Human Resources Department, its successor department,
and other applicable departments shall conduct such state and
national criminal history background checks.

Fingerprints obtained pursuant to the authority of this section shall
be submitted to the Florida Department of Law Enforcement for a
state criminal history records check and also to the Federal Bureau
of Investigation for a national criminal history records check. The
information obtained from each respective criminal history record
check conducted pursuant to this ordinance shall be used to

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored
and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now
in effect and remain unchanged.

26 29

determine a person's eligibility for employment, appointment, or access and to determine a person's eligibility for continued employment, appointment, or access.

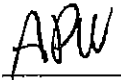
Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 4. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by

PASSED AND ADOPTED: March 17, 2015

Approved by County Attorney as
to form and legal sufficiency:



Prepared by:



Eric A. Rodriguez



30



RECEIVED BY FILE
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U.S. Department of Justice

Federal Bureau of Investigation

Office of the General Counsel

Clarksburg, WV 26306

August 28, 2015

Mr. Tim Giesecke
Chief
User Services Bureau
Florida Department of
Law Enforcement
Post Office Box 1489
Tallahassee, FL 32302-1489

Dear Mr. Giesecke:

Reference is made to your letter, dated May 26, 2015, with enclosures, requesting the assignment of an Originating Agency Identifier (ORI) for the Miami-Dade County Human Resources, pursuant to Florida Statutes (FIS), Section 125.5801. Reference is also made to emails dated May 20, 2014, November 20, 2013 and August 6, 2013, between Assistant General Counsel Thomas Aldridge of my staff, and Mr. Chuck Murphy of your staff, pertaining to a review of a proposed Miami-Dade ordinance amending Section 5.05 of the Code of Miami-Dade County.

The Criminal Justice Information Law Unit (CJILU) legal staff previously approved FIS § 125.5801, pursuant to Public Law (Pub. L.) 92-544 as an "umbrella statute" which gives counties and municipal governments authority to enact an ordinance meeting Pub. L. 92-544 criteria to obtain national background checks on employees or vendors in matters of security or public safety. Counties and municipal government ordinances must be approved by the CJILU and added to the approved Florida Pub. L. 92-544 list before fingerprints can be submitted to the FBI.

By email dated August 6, 2013, Mr. Aldridge indicated that draft Miami-Dade County Administrative Order Number 7-41 regarding pre-employment fingerprint based criminal history records checks did not meet Pub. L. 92-544 requirements as an umbrella statute. An administrative order is not sufficient to qualify as a Pub. L. 92-544 umbrella statute. Umbrella statutes specifically require a county or municipal "ordinance" to authorize a background check. Miami-Dade administrative orders relate to the authority of the Mayor. The Board of County Commissioners of Miami-Dade County is the entity authorized to pass ordinances relating to

Mr. Tim Giesecke

the affairs, property and government of Miami-Dade County. Hence, the Miami-Dade County Commission must pass an ordinance to qualify under the Florida umbrella statute. Mr. Aldridge's email also advised that the Volunteers for Children Act (VCA) which amended the National Child Protection Act (NCPA) was not applicable to Miami-Dade County employees.

In November 2013 an updated draft of the Miami-Dade County Ordinance was submitted to CJILU for review. By email dated November 20, 2013, CJILU indicated that the updated draft Miami-Dade County Ordinance submitted met the requirements of Pub. L. 92-544. Mr. Aldridge also requested that the Ordinance, once approved by the Miami-Dade County Commissioners, be resubmitted to the CJILU for review and inclusion on the approved list of Florida Pub. L. 92-544 statutes.

In April of 2014 a slightly different version of the previously approved Miami-Dade County Ordinance was submitted to CJILU for review. This version differed from the previous Miami-Dade County Ordinance in that it cited to Miami-Dade Administrative Order 7-41, which required us to determine whether the ordinance was relying upon this order or the Florida umbrella statute as authority for background checks. By email dated May 20, 2014, the CJILU disagreed with any inference that County Administrative Order 7-41 authorizes criminal history records checks of the FBI records. CJILU again stressed that the Florida umbrella statute specifically requires a county "ordinance" to authorize a background check. CJILU viewed the statement as an internal Board of Commissioners' determination that the ordinance is consistent with the Administrative Order's specified class of individuals to be subject to a criminal history record background check. As such, the CJILU determined that the draft Miami-Dade County Ordinance met the requirements of Pub. L. 92-544 when read with FIS § 125.5801.

By email dated May 26, 2015, the Florida Department of Law Enforcement requested the assignment of an ORI to Miami-Dade County Human Resources pursuant to FIS § 125.5801. Ordinance Number 15-20, dated March 17, 2015, was attached to the email. The CJILU has reviewed Ordinance Number 15-20 pertaining to fingerprint-based criminal history record checks of any position of county employment or appointment, whether paid or unpaid, or contractual, which is identified as critical to security or public safety and any private contractor or employee of a private contractor who has direct contact with individual members of the public or access to any public facility or publicly-operated facility to such an extent that such contact or access is critical to security or public safety. The CJILU has determined that Ordinance Number 15-20 does **not** meet the requirements of Pub. L. 92-544 for access to FBI criminal history record information (CHRI). Specifically, the ordinance appears to rely upon Implementing Order 7-41, not the Miami-Dade County Ordinance, as the authority for conducting the background check and indicates that the categories of individuals subject to the background check may be expanded by amending Implementing Order 7-41. An Implementing Order is not sufficient to qualify under the requirement of Pub. L. 92-544, as it is not legislatively enacted.

Mr. Tim Giesecke

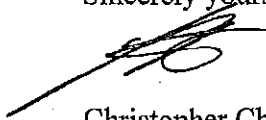
As background, since 1972, the FBI, with the assistance of the United States Department of Justice, has determined the parameters of Pub. L. 92-544. In order to meet the requirements of Pub. L. 92-544, a statute must meet the following criteria: (a) exist as the result of a legislative enactment; (b) require the fingerprinting of applicants who are to be subjected to a national criminal history background check; (c) expressly ("submit to the FBI") or by implication ("submit for a national check") authorize the use of FBI records for the screening of applicants; (d) identify the specific category(ies) of licensees/employees falling within its purview, thereby avoiding overbreadth; (e) not be against public policy; and (f) not permit unauthorized receipt of the CHRI by a private entity.

Please note that if the Miami-Dade County desires to submit a new ordinance that specifically addresses the concerns outlined above, the CJILU will reevaluate the new ordinance and return a prompt response.

During the course of this review, the CJILU discovered that a post-approval amendment had been made to FLS § 125.5801, which includes background checks on any private contractor, employee of a private contractor, vendor, repair person or delivery person who is subject to licensing or regulation by the county and any private contractor, employee of a private contractor, vendor, repair person, for-hire chauffeur, or delivery person who has direct contact with individual members of the public or access to any public facility or publicly operated facility in such a manner or to such an extent that the governing body of the county finds that preventing unsuitable persons from having such contact or access is critical to security or public safety. The revised version of FLS § 125.5801 must be submitted to the CJILU for review and inclusion on the approved list of Florida state statutes authorized pursuant to Pub. L. 92-544 before counties and municipalities can submit ordinances authorizing background checks on these additional categories.

Should you have any questions concerning this matter, please do not hesitate to contact Assistant General Counsel Thomas Aldridge at (304) 625-3620 or Paralegal Specialist Lori Bokey of the CJILU at (304) 625-2863.

Sincerely yours,



Christopher Chaney
Unit Chief
Criminal Justice Information Law Unit
Office of the General Counsel

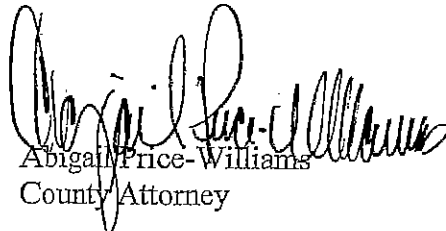


MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: December 6, 2016

FROM: 
Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 7(G)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(G)
12-6-16

ORDINANCE NO. _____

ORDINANCE RELATING TO CRIMINAL HISTORY RECORDS CHECKS; AMENDING SECTION 2-30 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; CLARIFYING THAT THE BOARD IS AUTHORIZING BY ORDINANCE RATHER THAN IMPLEMENTING ORDER STATE AND NATIONAL CRIMINAL HISTORY SCREENING FOR CERTAIN COUNTY EMPLOYEES, APPOINTEES, CONTRACTORS, AND EMPLOYEES OF CONTRACTORS; REMOVING REFERENCES TO IMPLEMENTING ORDER 7-41; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, in 2005, Miami-Dade County instituted a policy for conducting criminal background checks of employees, applicants and others as more fully set forth in Administrative Order 7-41 pursuant to section 125.5801, Florida Statutes; and

WHEREAS, section 125.5801 was amended in 2013 to expand its scope; and

WHEREAS, section 125.5801 currently requires such criminal background check policies to be enacted as an ordinance approved by the Board of County Commissioners in order to permit state and national criminal history records checks for:

- (a) Any position of county employment or appointment, whether paid, unpaid, or contractual, which is identified as critical to security or public safety; and
- (b) Any private contractor, employee of a private contractor, vendor, repair person, or delivery person who has direct contact with individual members of the public or access to any public facility or publicly operated facility in such a manner or to such an extent that the governing body of the county finds that preventing unsuitable persons from having such contact or access is critical to security or public safety; and

WHEREAS, criminal history record checks include fingerprinting these individuals, and having the individual's fingerprints submitted to the Florida Department of Law Enforcement for a state criminal history background check and to the Federal Bureau of Investigation for a national criminal history records check; and

WHEREAS, the information obtained from the criminal history record checks will be used to determine the respective individual's eligibility for employment, appointment or access as authorized in this Ordinance by this Board and section 125.5801; and

WHEREAS, to implement the current requirements of section 125.5801, this Board adopted Ordinance No. 15-20 which created Section 2-30 of the County Code and included references to Implementing Order 7-41; and

WHEREAS, after the adoption of Ordinance No. 15-20, state and federal authorities advised that references to implementing orders should be deleted from the ordinance so that it is clear that the authority for conducting criminal background checks is derived solely from an ordinance adopted by the governing body of the County; and

WHEREAS, the proposed amendment eliminates the reference to Implementing Order 7-41 as requested by the state and federal authorities; and

WHEREAS, this Board determines that it is in the best of interest of the County to amend Section 2-30 of the County Code for the reasons set forth herein and in the accompanying Mayor's memorandum which is incorporated herein; and

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
MIAMI-DADE COUNTY, FLORIDA:**

Section 1. Section 2-30 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

**Sec. 2-30. Criminal history record checks for certain
county employees, appointees, and contractors.**

Pursuant to section 125.5801, Florida Statutes, ~~[[as such may be
amended from time to time,]]~~ state and national criminal history
background checks shall be required for:

- (a) Any position of county employment or appointment,
whether paid, unpaid, or contractual, which is ~~[[identified
as]]~~ critical to security or public safety ~~[[pursuant to
Implementing Order 7-41, as such may be amended from
time to time]]~~; and
- (b) Any private contractor or employee of a private contractor
who has direct contact with individual members of the
public or access to any public facility or publicly-operated
facility to such an extent that the legislative body of the
County finds that such contact or access is critical to
security or public safety ~~[[, as set forth in Implementing
Order 7-41, as such may be amended from time to time]]~~.

Each such person shall be fingerprinted who is applying for any
such position, continuing employment or appointment in any such
position, or having such contact or access. The Miami-Dade
County Human Resources Department, its successor department,
and other applicable departments shall conduct such state and
national criminal history background checks.

¹ Words stricken through and/or ~~[[double bracketed]]~~ shall be deleted. Words underscored
and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now
in effect and remain unchanged.

Fingerprints obtained pursuant to the authority of this section shall be submitted to the Florida Department of Law Enforcement for a state criminal history records check and also to the Federal Bureau of Investigation for a national criminal history records check. The information obtained from each respective criminal history record check conducted pursuant to this ordinance shall be used to determine a person's eligibility for employment, appointment, or access and to determine a person's eligibility for continued employment, appointment, or access.

Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 4. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:

Eric A. Rodriguez

GBK

ER